

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-6280

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DARRELL EUGENE BANKS,

Defendant - Appellant.

Appeal from the United States District Court for the Western
District of North Carolina, at Asheville. Martin K. Reidinger,
District Judge. (1:09-cr-00052-MR-1)

Submitted: July 29, 2016

Decided: August 3, 2016

Before GREGORY, Chief Judge, and NIEMEYER and MOTZ, Circuit
Judges.

Affirmed in part; dismissed in part by unpublished per curiam
opinion.

Darrell Eugene Banks, Appellant Pro Se. Thomas Richard Ascik,
Donald David Gast, Assistant United States Attorneys, Asheville,
North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Darrell Eugene Banks appeals the district court's order denying his motion for a sentence reduction. Insofar as Banks challenges the district court's denial of his motion under 18 U.S.C. § 3582(c)(2) (2012), we review de novo a district court's determination regarding the scope of its legal authority under that provision. See United States v. Williams, 808 F.3d 253, 256 (4th Cir. 2015). We have reviewed the record and find no error in the district court's conclusion that it lacked authority to grant a reduction. We therefore affirm the district court's order in part.

Insofar as Banks challenges the district court's denial of his motion as an unauthorized, successive 28 U.S.C. § 2255 (2012) motion, that portion of the court's order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B) (2012). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2012). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. Slack v. McDaniel, 529 U.S. 473, 484 (2000); see Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003).

When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the motion states a debatable claim of the denial of a constitutional right. Slack, 529 U.S. at 484-85.

We have independently reviewed the record and conclude that Banks has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal in part. We deny Banks' motion for immediate release. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED IN PART;
DISMISSED IN PART